TAI CHOI YU

v.

RR SETHU & ANOR

HIGH COURT SABAH AND SARAWAK, MIRI
SULAIMAN DAUD JC
[SUIT NO: 22-60-2000 (MR)]
8 JANUARY 2001

CIVIL PROCEDURE: *Appearance - Memorandum of conditional appearance - Registrar endorsed twenty-one days time limit for setting aside writ - Whether time limit contravened O. 12 r. 7 Rules of the High Court 1980*

LEGAL PROFESSION: *Admission - Ad hoc - Petition - Whether opposing party has a right to be heard on the petition - Whether opposing party should be served a copy of the petition - Advocates Ordinance (Sarawak Cap 110), s. 10(c)*

The first defendant obtained an order for an *ad hoc* admission to appear for and on behalf of the second defendant in an action between the parties concerned. The plaintiff sought to declare the said order a nullity on the ground that the defendants failed to serve a copy of the petition for the *ad hoc* admission to him as a result of which he was deliberately excluded from partaking in the deliberation and hearing of the said petition and was not given an opportunity to raise objections in respect thereof. The defendants now applied to strike out the plaintiff's action under O. 18 r. 19 of the Rules of the High Court 1980 ('RHC') on the grounds that: (i) the plaintiff had no right to be served with or be heard on the petition; (ii) the plaintiff's claim was not within the purview or jurisdiction of the High Court; (iii) the plaintiff had no *locus standi* to be heard at the petition; (iv) the plaintiff had no reasonable cause of action; and (v) the plaintiff's action was frivolous and an abuse of the process of the court.

The plaintiff raised a preliminary objection regarding the conditional appearances entered by the defendants. Two questions of law arose from the preliminary objection. Firstly, whether the period of twenty days as endorsed by the deputy registrar in the memorandum of conditional appearance for setting aside the plaintiff's writ of summons contravened O. 12 r. 6(2) and O. 12 r. 7 of the RHC. Secondly, whether an application for striking out under O. 18 r. 19 RHC can be made before the expiry of the period endorsed in the said memorandum of appearance.

Held:

[1] Paragraph (2) of O. 12 r. 6 RHC clearly provides for the application to set aside the writ to be made within the time limited for the purpose without specifying the same or making any reference to the fourteen days period as set out in O. 12 r. 7. Therefore, the time limit to be inserted in the memorandum of conditional appearance in Form 16 shall be fixed by the registrar. The fourteen days limit for a setting aside application under O. 12 r. 7 RHC shall only apply if such time limit is not otherwise ordered by the registrar in endorsing leave under O. 12 r. 6 RHC.

[2] Order 18 r. 19 RHC provides the court the power to strike out any pleading or endorsement in an action at any stage of the proceedings. Therefore, it can be inferred that an application for striking out may be made during the period in which a conditional appearance entered is still in effect. In the circumstances, the preliminary objection was dismissed.

[3] There was no express provision in s. 10(c) of the Advocates Ordinance (Sarawak Cap 110) ('the Ordinance') which required a copy of the application to be served on the other party to the cause or matter or for the court to have regard to the views of such other party. Therefore, it is not the intention of the legislature to give the other party to the cause or matter the right to be heard.

[4] The petition for the said *ad hoc* admission did not deprive the plaintiff of his rights to continue with the proceedings against the defendants. Also, the plaintiff's statement of claim did not disclose any infringement of any contractual or proprietary right of the plaintiff. Thus, the plaintiff had no genuine interest in the declarations sought by him therein. The plaintiff had no *locus standi* either to appear at the said petition or to commence the present action on each of the defendant.

[5] Section 10(c) of the Ordinance expressly provides that the power to grant permission vested in the Chief Justice is also exercisable by a judge in the absence of the Chief Justice from Sarawak. Therefore, it cannot be said that such power is not within the jurisdiction of the High Court.

[6] The plaintiff's suits against the defendants was obviously unsustainable or unmaintainable as it did not disclose any cause of action. The pleadings in the present action were frivolous, vexatious and an abuse of the process of the court.

[Defendants' application allowed.]

Case(s) referred to:
Badiaddin Mohd Mahidin & Anor v. Arab Malaysian Finance Bhd [1998] 2 CLJ 75 ***(refd)***
Creswell v. BOC Ltd [1980] 3 All ER 443 ***(refd)***
Davis v. Johnson [1978] 1 All ER 1132 ***(refd)***
Government of Malaysia v. Lim Kit Siang [1988] 2 MLJ 12 ***(refd)***
Tan Sri Hj Othman Saat v. Mohamed lsmail [1982] 2 MLJ 177 ***(refd)***

Legislation referred to:
Advocates Ordinance (Sarawak Cap. 110), ss. 4, 5, 8, 9, 10(c)
Federal Constitution, art. 8
Legal Profession Act 1976, s. 18(2)
Rules of the High Court 1980, O. 12 rr. 6(2), 7(1), O. 18 r. 19

For the plaintiff - Tai Choi Yu; M/s Tai Choi Yu & Co
For the 1st defendant - Sim Hui Chuang; M/s Reddi & Co
For the 2nd defendant - M/s Dominic Lai & Co

Reported by Suhainah Wahiduddin

JUDGMENT

Sulaiman Daud JC:

By summons in chambers dated 27 July 2000 (encl. 14) the second defendant applied under O. 18 r. 19 of the Rules of the High Court 1980 ('the RHC') and under the inherent jurisdiction of the court to have set aside and struck out the writ of summons of the plaintiff dated 22 June 2000 on the various grounds set out therein which can be summarised under the following headings, that is to say (i) the plaintiff has no right to be served with or be heard on the petition (ii) the plaintiff's claim is not within the purview or jurisdiction of the High Court (iii) the plaintiff has no *locus standi* to be heard at the petition or in the present action (iv) the writ of summons discloses no reasonable cause of action (v) the action is scandalous, frivolous and vexatious or an abuse of the process of the court. The first defendant, by summons in chambers dated 1 August 2000 (encl. 16), made similar application to strike out the plaintiff's suit on the same grounds as that of the first defendant. Alternatively both the defendants applied for an order that the action herein be stayed until the cost for the suit No. 22-56-2000 (MR) which had been discontinued by the plaintiff is paid to the defendants. Both the learned counsels for the plaintiff and the first and second defendants agree that these two applications be heard together.

The application in encl. 14 is supported by the affidavits of Dominic Lai affirmed on 24 July 2000 and 8 September 2000 ("Lai's affidavits"). The application in encl. 16 is supported by the affidavits of RR Sethu affirmed

on 21 July 2000 and 5 September 2000 ("Sethu's affidavits") and that of Domininc YH Lai affirmed on 20 July 2000 ("Dominic's affidavit"). Both the said applications are opposed by the affidavit in opposition of Tai Choi Yu affirmed on 26 August 2000 ("Tai's affidavit").

The factual background which lead to these applications can be briefly stated as follows. By Originating Motion No. 25-5-99 ("the originating motion") filed at Miri High Court on 23 September 1999 the plaintiff in the present action claimed various reliefs under the Companies Act 1965 against the defendants named therein. Pursuant to the said originating motion the second defendant in the present action, who was named as the first defendant in the said originating motion, instructed M/s. Dominic Lai & Co, an advocate of the High Court in Sabah and Sarawak to move a petition for an *ad hoc* admission to be granted to RR Sethu, an advocate and solicitor of the High Court of Malaya, to appear for and on behalf of the second defendant in the said originating motion. Upon such instruction a petition for such purpose was presented to the High Court at Kuching on 15 December 1999 with a copy thereof served on the State Attorney General, Sarawak and the Advocates' Association of Sarawak. Before the filing of such petition the plaintiff, through its solicitor, by a letter dated 25 November 1999 addressed to the Senior Assistant Registrar, High Court Miri requested and applied to the court to be allowed to raise objections at the hearing of the said petition. A copy of the said letter was also forwarded to M/s Dominic Lai & Co, the solicitor on record for the first defendant. The plaintiff averred that despite such request the first and second defendants failed to serve a copy of the said petition to him and by reason thereof the plaintiff alleged that he was deliberately excluded from partaking in the deliberation and hearing of the said application and that he was not given the opportunity to be heard or to raise objection in respect thereof. In the premise the plaintiff asserted that the order for the *ad hoc* admission dated 14 January 2000 is unconstitutional, oppressive and arbitrary, being in discrimination of the plaintiff in substitution for and/or in place of the State Attorney General and the Sarawak Advocates Association.

Preliminary Objection

At the outset of the hearing the learned counsel for the plaintiff raised preliminary objection in relation to the conditional appearances entered by both the defendants. He submitted that both the conditional appearances are defective and irregular in that the period within which to set aside the writ of summons as set out in the memorandum thereof is endorsed as twenty one (21) days and not fourteen (14) days as prescribed in O. 12 r. 6(2) and O. 12 r. 7(1) of the RHC. By reason thereof he argued that the said conditional appearances have to be set aside or alternatively to be treated for all purposes as an unconditional appearance. He further submitted that in the event the court

set aside the conditional appearances in the present action then both the defendants have no *locus standi* to initiate the summons in chambers herein or alternatively if the said conditional appearances be treated as unconditional appearance then the defendants must file and serve their defence on or before the 5 August 2000.

In my view two questions of law arise for decision in respect of the preliminary objection. Firstly whether the period of twenty days as prescribed by the learned deputy registrar in the memorandum of conditional appearance contravene O. 12 r. 7 of the RHC thereby rendering the said memorandum defective and irregular; and secondly whether an application for striking out under O. 18 r. 19 of the RHC can be filed in before the expiry of the period prescribed in the memorandum of appearance for setting aside a writ of summons under the said O. 12 r. 7.

The first issue requires the proper construction of the relevant provisions relating to the entry of conditional appearance, namely O. 12 r. 6 and O. 12 r. 7 of the RHC. Order 12 r. 6 provides as follows:

> (1) A defendant to an action may with leave of the Court enter a conditional appearance in Form 16 in the action.
>
> (2) A conditional appearance, except by a person sued as a partner of a firm in the name of that firm and served as a partner, is to be treated for all purposes as an unconditional appearance unless the court otherwise orders or the defendant applies to the Court, within the time limited for the purpose, for an order under rule 7 and the Court makes an order thereunder.

Form 16 referred to in the said O. 12 r. 6, in so far as relevant is in the following form:

> MEMORANDUM OF CONDITIONAL APPEARANCE
>
> Enter conditional appearance for (name of defendant) without prejudice to an application to set aside the writ (or service of the writ)
>
> Dated the ... day of ..., 19...
>
> ...
> Solicitor for the defendant
>
> NOTE:
>
> Every conditional appearance and duplicate is sealed on entry with the following stipulation:

This appearance is to stand as unconditional unless the defendant applies within ... days to set aside the writ, or service thereof, and obtains an order to that effect.

...
Registrar

Whereas the, said O. 12 r. 7 provides as follows:

(1) A defendant to an action may at any time before entering an appearance, or, if he has entered conditional appearance, within fourteen days after entering appearance, apply to the court for an order setting aside the writ or service, or notice of the writ, on him, or declaring that the writ or notice has not been duly served on him or discharging any order giving leave to serve the notice on him out of jurisdiction.

(2) An application under this rule must be made by summons.

My observation on the aforesaid rules are as follows. A conditional appearance may only be entered with leave of the court and is to be treated for all purposes as unconditional appearance unless the court otherwise orders. As provided under the said O. 12 r. 6, such leave has to be endorsed by the registrar on the said memorandum (in form 16) specifying the time within which the application to set aside the writ or service thereof must be made. Upon perusal of the said form 16 it is obvious that the time limited for making the application to set aside the writ therein is left blank to be fixed by the registrar when he endorses his leave thereon. In my opinion para. (2) of O. 12 r. 6 of the RHC clearly provides for the application to be made within the time limited for the purpose without specifying the same or making any reference to the period set out in O. 12 r. 7 therefore. I would therefore conclude that the proper construction of O. 12 r. 6 of the RHC is that the limit of time to be inserted in the said form 16 shall be fixed by the registrar and is not limited to the fourteen days as contended by the plaintiff. It is also my view that the fourteen days limit for making the application for setting aside as set out in O. 12 r. 7 of the RHC shall only apply if such time limit is not otherwise ordered by registrar in endorsing such leave under O. 12 r. 6 thereof. In the premise I cannot accept the contention of the learned counsel for the plaintiff that the memorandum of conditional appearance is defective and therefore irregular for the reasons by him as aforesaid.

On the other remaining issue it is my view that the application to strike out the writ of summons under O. 18 r. 19 is not irregular by reason that such an application was made before the conditional appearance becomes an unconditional appearance under O. 12 r. 6 of the RHC. As can be seen the memorandum of conditional appearance for both the first and the second defendants were entered on 21 July 2000 and the relevant summons in chambers were filed, in the case of the first defendant on 1 August 2000 and

in the case of the second defendant on 27 July 2000. It seems to me that O. 18 r. 19 of the RHC clearly provides for the power of the court to strike out any pleading or the indorsement of any writ in an action at any stage of the proceedings. From such power it can likewise be inferred that an application for such striking out may also be made at any stage of the proceedings, including the period during which a conditional appearance entered is still in effect.

In the circumstances I dismiss the preliminary objection of the plaintiff in respect of both the applications in encl. 14 and encl. 16. Having dealt with the preliminary objection I shall now consider the application for the striking out made by the first and second defendants.

Application For Striking Out

The issues as I see them that arise on the applications are as follows:

(a) whether the plaintiff has the right to be served with or be heard on the petition;

(b) whether the plaintiff has *locus standi* in respect of the petition, or to bring and maintain this suit against the first or the second defendant;

(c) whether the claim is within the purview or jurisdiction of the High Court;

(d) whether the plaintiff has a cause of action to maintain the suits against the first or the second defendant, as the case may be;

(e) whether the action is scandalous, frivolous and vexatious or otherwise an abuse of the process of the court.

Plaintiff Right To Be Served With Or Be Heard On The Petition

Each of the defendant raised the issue that the suit is not maintainable at law on the ground that the plaintiff has no right under the law to be served with or be heard on the petition contrary to the averment of the plaintiff in the statement of claim. For the determination of such issue it shall be necessary to examine the relevant provisions of the Advocates Ordinance (Sarawak Cap. 110) ("the Ordinance") which regulate the admission of persons as advocates or to practise in any one cause or matter. Section 4 of the Ordinance provides for the qualification for admission of advocate while s. 5 thereof sets out the procedure for making such application. Any person admitted as an advocate shall have the exclusive right to practise in Sarawak if he is the holder of a certificate to practice (see ss. 8 and 9 of the Ordinance). However all such requirements is subject to certain exception as provided in s. 10 of

the Ordinance, of which para. (c) thereof is relevant to the present application. The said s. 10(c) provides as follows:

> 10. Notwithstanding in this Ordinance contained –
>
> (a) deleted;
>
> (b) (not relevant)
>
> (c) the Chief Justice or in his absence from Sarawak a Judge may in his absolute discretion upon application by or on behalf of any person who possesses any of the qualification mentioned in subsection (1) of section 4 grant permission to such person to practise in any one case or matter subject to any conditions he may think fit and to the payment of the prescribed fee if –
>
> (i) such person has been instructed by a local advocates; or
>
> (ii) having regard to all the relevant circumstances he is of the opinion that it is in the interest of justice so to do.

The question is whether the first defendant's application for *ad hoc* admission to practise as an advocate in respect of originating motion 25-5-99 (MR) effected the plaintiff both in his capacity as an advocate or as a litigant in the said originating motion. The learned counsel for the second defendant submitted that the application for such admission is made by or on behalf of the person seeking such permission and it is not even an application by the party who wishes to engage him. He further submitted that it is not a civil matter where there are adversaries before the chief judge who heard the application. Upon perusal of the said provisions it is clear to me that there is no express provision in the said s. 10(c) of the Ordinance which require a copy of the application thereunder to be served on the other party to the cause or matter or for the court to have regard to the views of such other party. However in the case of application as advocates under s. 5 of the Ordinance there is an express provision therein for the application and the documents in support to be delivered to the state attorney who shall be entitled to be hard on any such application. It is also to be noted that s. 18(2) of the Legal Profession Act 1976 ("the Act") for the time being in force in West Malaysia also makes provisions for the originating motion for admission as an advocate and solicitor on *ad hoc* basis to be served on the other party to the cause or matter and that before admitting such person the court shall have regard to the views of the party so served.

In the interpretation of any written law the task of this court is to give effect to the intention of Parliament if that can be seen from the language of the statue. (see *Davis v. Johnson* [1978] 1 All ER 1132), and the first canon of

construction, that is the lateral rule, that is to give, the "ordinary and natural meaning" of the words contained in the statue (see *Creswell v. BOC Ltd* [1980] 3 All ER 443). In the case before me I am of the view that the language of the Ordinance is apparent and unambiguous and the intention of the legislature is clear. By taking the said s. 5 of the Ordinance and s. 18(2) of the Act as comparisons it is my view that, in the absence of any express provisions to that effect, it is not the intention of the legislature to give the other party to the cause or matter the right to be served with and to be heard on the petition. I therefore cannot accept the averment of the plaintiff in his pleading that such failure constitute a breach of natural justice which renders the court order a nullity since the said *ad hoc* admission of the first defendant has not in any way effect any right or interest of the plaintiff.

Locus standi

The next ground relied on by each of the defendant is that the plaintiff is a stranger and has no *locus standi* in respect of the petition or to bring and maintain the present action. On this point the learned counsel for the second defendant cited two landmark cases on *locus standi*, namely the case of *Government of Malaysia v. Lim Kit Siang* [1988] 2 MLJ 12, and the case of *Tan Sri Hj Othman Saat v. Mohamed lsmail* [1982] 2 MLJ 177.

In *Government of Malaysia v. Lim Kit Siang*, Tun Salleh Abas LP (as he then was) stated at p. 20:

> Every legal system has a built-in mechanism to protect its judicial process from abuse by busy-bodies, cranks and other mischief makers by insisting that a plaintiff should have a special interest in the proceedings which he institutes. This special interest is a nexus between him and the party against whom he brings his complaints to court and is known as *locus standi*.

Further, after discussing the development of the law on *locus standi* in England, his lordship concluded at p. 24 as follows:

> In Malaysia, there are two important judgments on *locus standi*. The first is *Lim Cho Hock v. Government of the State of Perak, Menteri Besar, State of Perak and President, Municipality of lpoh* and the second is *Tan Sri Haji Othman Saat v. Mohamed bin Ismail*.

After referring to the facts and the decision of these two cases, his lordship continued further down on the same page:

> in my judgment, these two cases represent the high water marks of the law of *locus standi* in Malaysia, beyond which the court should be careful to tread. Both these cases can be justified on the basis that the plaintiff had a genuine private interest to be furthered and protected.

What is important about *Tan Sri Haji Othman Saat*'s case is that part of the judgment which dealt with the approach which the court should take when confronted with the question of *locus standi*. Here is what the court said:

> The sensible approach in the matter of *locus standi* in injunctions and declarations would be that as a matter of jurisdiction, an assertion of an infringement of contractual or a proprietary right, the commission of a tort, a statutory right or the breach of a statute which affects the plaintiff's interests substantially or where the plaintiff has some genuine interest in having his legal position declared, even though he could get no other relief, should suffice.

1 will now examine the issue on *locus standi* based on the aforesaid approach. In his statement of claim the plaintiff averred that since the first defendant's petition for *ad hoc* admission is in respect of a cause or matter in which he is a party, he is affected by and has an interest in the said application. By reason thereof the defendants owe a duty of care and to serve a copy of the said application on the plaintiff prior to the hearing of the application to enable the plaintiff to appear and raise objections at the hearing. The question is whether the plaintiff, as a party to the cause or matter for which the *ad hoc* admission is applied for, has *locus standi* either to be heard on the petition or to bring and maintain the present action. In my judgment the answer in both cases are in the negative. In the case of the petition, even though it relates to an *ad hoc* admission to appear in a cause or matter in which the plaintiff is party but such application has not in any way effect the right and interest of the plaintiff therein. The petition is made by or on behalf of the first defendant seeking permission to practise and to appear for the second defendant in the said originating summons. Such petition if granted by the chief judge shall not deprive the plaintiff of his right to counsel or to continue with the proceedings commenced by him against both the defendants in the originating motion.

In the case of the present application I am of the view that the plaintiff has no genuine interest in the declarations sought by him therein. Both the declarations sought do not relate to any legal position of the plaintiff but they relate to the legal position of the first defendant on a matter between the first defendant and the chief judge. I am also satisfied that the statement of claim does not disclose any infringement of any contractual or proprietary right of the plaintiff. I am also of the view that the service of the petition to the Sarawak State Attorney-General and the Sarawak Advocates Association and not to the plaintiff is not an act of discrimination against the plaintiff in violation of art. 8 of the Federal Constitution or an act of fraud deliberately perpetrated by the defendants to the plaintiff. Such service is justified as the State Attorney-General is constitutionally regarded as the guardian of public

interest to see that such admission is in order and the Sarawak Advocates Association is a body which looks after the interest of advocates who are members thereof in the State of Sarawak.

In the circumstances it is my finding that the plaintiff has no *locus standi* either to appear at the said petition or to commence the present action on each of the defendant. The applications of first and the second defendants in encl. 14 and 16, as the case may be, should succeed on this ground alone.

Jurisdiction To Set Aside Order

The other point raised by both the learned counsels for the first and second defendants in their submission involves the question of jurisdiction. In essence both the learned counsels contended that the High Court has no jurisdiction to hear the declaratory relief claimed by the plaintiff as the order sought to be struck out therein is granted under the special jurisdiction conferred on the chief judge and is not subject to setting aside by a judge of the High Court. With respect I do not agree with such submission. Section 10(c) of the Ordinance expressly provides that the power to grant permission thereunder is vested in the Chief Justice or a judge in the case of his absence from Sarawak. Since such power is also exercisable by a judge in the absence of the chief justice, in my humble view, it cannot be said that such power is not within the jurisdiction of a High Court or a judge. I am also of the view that in exercising his power under s. 10(c) of the Ordinance the Chief Justice is in fact exercising the power within the jurisdiction of the High Court and that any order made by virtue thereof may in certain circumstances be reviewed or set aside by another High Court.

What then are the exception in which one High Court may set aside a final order regularly obtained from another High Court of concurrent jurisdiction. In the case of *Badiaddin Mohd Mahidin & Anor v. Arab Malaysian Finance Bhd* [1998] 2 CLJ 75 Mohd Azmi FCJ spelt out such special exception as follows:

> It is of course settled law as laid down by the Federal Court in *Hock Hua Bank*'s case that one High Court cannot set aside a final order regularly obtained from another High Court of concurrent jurisdiction. But one special exception to this rule (which was not in issue and therefore not discussed in *Hock Hua Bank*) is where the final judgment of the High Court could be proved to be null and void on ground of irregularity or lack of jurisdiction so as to bring the aggrieved party within the principle laid down by a number of authorities culminating in the Privy Council case of *Isaacs v. Robertson* AC 97 where Lord Diplock while rejecting the legal aspect of voidness and voidabitity in the orders made by a court of unlimited jurisdiction, upheld the existence of a category of orders of the court '... which a person affected by

> the order is entitled to apply to have set aside *ex debito justitiae* in the exercise of the inherent jurisdiction of the court, without his needing to have recourse to the rules that deal expressly with proceedings to set aside orders for irregularity, and to give to the judge a discretion as to the order he will make.

Further down his lordship added:

> For my part, I must hasten to add that apart from breach of rules of natural justice, in any attempt to widen the door of the inherent jurisdiction and discretion of the superior courts to set aside an order of court *ex debito justitia*e to a category of cases involving orders which contravened 'any written law', the contravention should be one which defies a substantive statutory prohibition so as to render the defective order null and void on ground of illegality or lack of jurisdiction. It should not for instance be applied to a defect in a final order which has contravened a procedural requirement of any written law. The discretion to invoke the inherent jurisdiction should also be exercised judicially in exceptional cases where the defect is of such a serious nature that there is a real need to set aside the defective order to enable the court to do justice. In all cases, the normal appeal procedure should be adopted to set aside a defective order, unless the aggrieved party could bring himself within the special exception.

Gopal Sri Ram JCA express the same view on the inherent power the court of concurrent jurisdiction to set aside its order made in breach of written law. His lordship said at p. 113:

> I take it to be well settled that even courts of unlimited jurisdiction have no authority to act in contravention of written law. Of course, so long as an order of such court is made in breach of a statue, it is made without jurisdiction and may therefore be declared void and set aside in proceedings brought for that purpose. It is then open to the court, upon the illegality being clearly shown, to grant the declaration to the effect that the order is invalid and to have it set aside. It is wrong to assume that such an order may only be corrected on appeal.

In the present action the plaintiff asserted that the said order is null and void on the ground that there is a breach of natural justice as he, being an interested party, was not served with or be heard on the petition for the grant of the *ad hoc* admission. In view of my earlier finding that the plaintiff has no *locus standi* to be heard on the petition and that there is no requirement under the Ordinance for the petition to be served on the plaintiff or that he be heard at the hearing thereof I hold that the plaintiff is not entitled to apply to this court to set aside the said order *ex debito justitiae* on the ground of breach of natural justice or that it is issued in contravention of any written law.

No Reasonable Cause Of Action

It is the submission of the learned counsel for both the first and second defendants that on the facts as pleaded in the statement of claim, the plaintiff has no reasonable cause of action against each of the defendants. As to the meaning of "a cause of action" Salleh Abas LP in the case of *Government of Malaysia v. Lim Kit Siang* said at p. 19:

> 'A cause of action' is a statement of facts alleging that a plaintiff's right, 'either at law or by statue, has, in some way or another, been adversely affected or prejudiced by the act of the defendant in an action. Lord Diplock in *Letang v. Cooper* at p. 242 defined "a cause of action" to mean "a factual situation, the existence of which entitles one person to obtain from the court a remedy against another person". In my view the factual situation spoken of by Lord Diplock must consist of a statement alleging that, first the respondent/plaintiff has a right either at law or by statue and that, secondly, such right has been affected or prejudiced by the appellant/defendant's act.

It is plain and obvious to me that there is nothing in the plaintiff's statement of claim which shows that the plaintiff's right, either at law or by statue, has been effected by the act of any the defendants in the present action. The fact that the first defendant has been appointed to act as counsel for the second defendant in a cause of matter in which the plaintiff is a party does not in my view create any legal relationship between them. The second defendant in exercising its fundamental right to counsel has chosen to engage the first defendant as its counsel. As stated earlier the permission granted by the chief justice to the first defendant to practise and act for the second defendant is made in compliance with the requirements of the Ordinance. The declaration sought by the plaintiff in the present action tantamount to depriving the second defendant of his fundamental right to appoint a counsel of his choice. By reason thereof I am of the view that the plaintiff's suits against the first and second defendants is also obviously unsustainable or unmaintainable as it does not disclose any cause of action and the defendants' application to strike out the plaintiff's writ of summons should also succeed on this ground.

For the aforesaid reasons I conclude that this is a plain and obvious case for striking out the writ of summons and the statement of claim for lack of *locus standi* or as disclosing no reasonable of actions. It is also plain and obvious that the pleadings in the present action is frivolous, vexatious or that they are otherwise an abuse of the process of the court. Accordingly I allow the application of the first and second defendants to strike out the writ of summons of the plaintiff, with costs to be taxed unless otherwise agreed.